



ARKANSAS JUDICIARY

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## Rule 13. Counterclaim And Cross-Claim.

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which, at the time of filing the pleading, the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaim. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after filing his pleading shall be presented as a counterclaim by supplemental pleading, provided that if such counterclaim matures or is acquired after all issues are joined, it may be asserted by the pleader in a separate action.

(e) Omitted Counterclaim. When a pleader fails to assert a counterclaim, he shall be entitled to assert such counterclaim by amended or supplemental pleading subject to the requirements and conditions of Rule 15.

(f) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence which is the subject matter either of the original action or of a counterclaim therein or relating to any property which is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(h) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Reporter's Notes to Rule 13: - 1. With the exception of one minor wording change, Sections (a) and (b) are otherwise identical to FRCP 13(a) and (b). The word "serving" found in the Federal Rule is omitted and the word "filing" is substituted therefor. These sections abolish the

strict compulsory counterclaim rule in Arkansas as codified in superseded Ark. Stat. Ann. 27-1121 (Repl. 1962). Under this and the Federal Rule, the only counterclaims which are compulsory are those which arise out of the same transaction or occurrence. Otherwise, a counterclaim is permissive.

2. Section (c) is identical to FRCP 13(c) and does not change Arkansas law.

3. Section (d) of the Federal Rule is eliminated inasmuch as these rules cannot enlarge one's right to assert a counterclaim against the United States or any officer or agent thereof.

4. Section (d) is a revision of FRCP 13(e) and recognizes those rare occasions where a counterclaim arises after pleadings are served.

5. Section (e) is a revision of FRCP 13(f). Under the Federal Rule, delay in asserting a counterclaim may be fatal to one's right to assert such claim. *Frank Adam Electric Co. [v.] Westinghouse Electric & Mfg. Co.*, 146 F. 2d 165 (C.C.A. 8th, 1945). This section follows superseded Ark. Stat. Ann. 27-1160 (Supp. 1975), by permitting a counterclaim to be asserted by amended pleading as any other amendment, subject to the conditions of Rule 15.

6. Section (e) is identical to FRCP 13(g). It follows the intent of superseded Ark. Stat. Ann. 27-1134.1 (Supp. 1975) by making such claims permissive rather than mandatory.

7. Section (g) follows FRCP 13(h) by allowing other parties to be brought in under the conditions of Rules 19 and 20. This is essentially what was permitted under superseded Ark. Stat. Ann. 27-1134.2 (Supp. 1975).

8. Rule 42(b) gives the court discretion to grant separate trials where two or more competing claims would otherwise have to be tried together. Section (h) of Rule 13, which is identical to Section (i) of the Federal Rule, answers any possible argument that the claim tried last would be barred by res judicata by reason of the first claim having been reduced to judgment or dismissed.

Addition to Reporter's Note, 1990 Amendment: - The amendment deletes the last sentence of subdivision (c), which provided that "[i]n the event the amount asserted in the counterclaim exceeds the monetary jurisdiction of the court in which it is filed, the matter shall be transferred to a court of competent jurisdiction to hear the full extent of the claim and counterclaim." This provision created confusion, since the state courts of general jurisdiction do not have monetary jurisdictional limits. While inferior courts have such limits, counterclaims in those courts are governed by Rule 7 of the Inferior Court Rules [now District Court Rules].

### **History Text:**

History. Amended December 10, 1990, effective February 1, 1991

### **Associated Court Rules:**

Rules of Civil Procedure

### **Group Title:**

III. Pleadings and Motions

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